

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and

THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT APPEAL NO : 1630 of 1999

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated
29.03.1996 in W.P.NO.10296 of 1993 on the file of the High Court.)

Between:

Cheemalavagupalli Co-operative Credit Society Ltd.,

Represented by its President, Sri V.K. Ramachandra Reddy,

S/o. Singarappa, aged about 62 years, Cheemalavagupalli Village,

Pedapappuru Mandal, Ananthapur District.

..... APPELLANT

AND

1. P. Ramanjaneyulu Naidu, S/o. P.Vengama Naidu,
Aged about 37 years, R/o. Cheemalavagupalli Village,
Pedapappuru Mandal, Ananthapur District.

2. The Chairman, Industrial Tribunal-Cum-Labour Court,
Ananthapur.

.....RESPONDENTS

Counsel for the Appellant: MR.V.VENKATARAMANA

Counsel for the Respondent No1: MR C. DAMODAR REDDY.

Counsel for the Respondent No2: GP FOR LABOUR

The Court made the following :

JUDGMENT: (per Hon'ble Sri Justice J.Chelameswar)

The 1st respondent in Writ Petition No.10296 of 1993 is the appellant herein and the petitioner and the 2nd respondent therein are the respondents in this appeal.

2. The said writ petition was allowed by its order dated 29th March, 1996. The 1st respondent herein was an employee of the appellant society. His services were terminated by the society and the order of termination was challenged in an appeal in I.D.No.261 of 1989. By an award dated 09.02.1993 in I.D.No.261 of 1989, the Industrial Tribunal-cum-Labour Court, Anantapur, directed the appellant-society to reinstate the 1st respondent herein into service on the ground that the termination of the service was illegal, but however, declined to grant any attendant benefits to the 1st respondent herein so far as the back wages are concerned. Aggrieved by the non-granting of the back wages, the 1st respondent filed the above writ petition. As already noticed the writ petition was allowed granting full back wages to the 1st respondent for his out of service and hence, the writ appeal.

3. In the writ petition, the learned Single Judge held that once the order of termination of services of the 1st respondent herein was held to be illegal, void and abinitio, the Labour Court was precluded from denying the back wages and the back wages were liable to be awarded as a matter of course in a case of this nature.

4. The learned Counsel for the appellant submitted that the learned Single Judge erred in coming to the conclusion that on an order of reinstatement of a workman, back wages follow as a matter of course. The learned Counsel placed reliance on a decision reported in **Hindustan Motors Ltd., v. Tapan Kumar Bhattacharya**, wherein the Apex Court held at paragraph 11, which reads thus:-

“Under Section 11-A as amended in 1971, the Industrial Tribunal is statutorily mandated, while setting aside the order of discharge or dismissal and directing reinstatement of the workman to consider the terms and conditions, subject to which the relief should be granted or to give such other relief to the workman including the award of any other punishment in lieu of the discharge or dismissal, as the circumstances of the case may require. The section is couched in wide and comprehensive terms. It vests a wide discretion in the Tribunal in the matter of awarding proper punishment and also in the matter of the terms and conditions on which reinstatement of the workman should be ordered. It necessarily follows that the Tribunal is duty-bound to

consider whether in the circumstances of the case, back wages have to be awarded and if so, to what extent.”

The learned Counsel further submitted that it is a discretion vested in the Labour Court to grant back wages or not in any given case where the reinstatement of an employee is ordered. The back wages do not follow as a matter of course in all the cases where reinstatement is ordered.

5. No doubt, the Tribunal certainly has a discretion in awarding the back wages and has to take all relevant circumstances into consideration before either awarding or retaining the back wages. The legal position appears to be as was laid down by the Supreme Court in **Hindustan Tin Works (P) Ltd., v. Employees**, which judgment acquired the approval in the case cited supra, wherein the following principle was laid down:

“Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage, the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But, the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular.”

6. The appellant who is the party objecting for payment of back wages pleaded the financial inability to pay the back wages. In the rejoinder filed in I.D. No. 261 of 1999, it is stated as follows:-

“It is further submitted that the society was running under losses. The Commission that was getting by the society on loan amounts by way of interest was very less. The out standing loan amount was Rs.5,44,169/-. The commission of interest that was a getting by the society for the out standing loan amount of Rs.5,44,169/- was very less.”

7. In view of the plea of the appellant, it cannot be said that the inability of the

employer is not relevant circumstance at all in exercising the discretion regarding the direction for payment of back wages. In the circumstances, we deem it appropriate that the order under appeal be modified by directing the appellant-society to pay the back wages to the 1st respondent to the extent of fifty percent.

8. The Writ Appeal is accordingly disposed of. No order as to costs.

J. CHELAMESWAR, J.

GHULAM MOHAMMED, J.

Dated: 07th March, 2005

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Copy to:

1. The Chairman, Industrial Tribunal-cum-Labour Court,
Anantapur.
2. Two C.Cs to the Government Pleader for Labour, High Court Buildings
High Court of A.P., Hyderabad. (O.U.T.)
3. Two C.D.Copies.